

Message Text

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TO AMEMBASSY ACCRA

UNCLAS STATE 166624

E.O. 11652: NA

TAGS: ETRD, US, GH

SUBJ: VOLTA ALUMINIUM CO. LTD. (VALCO)

EXIM CREDIT 5431

IN CONNECTION WITH CLOSING FOR CURRENT FIFTH POTLINE EXPANSION OF THE VALCO EXPANSION AUGMENTATION PROJECT, ALL LOAN AND OTHER PAPERS HAVE BEEN DELIVERED INESCROW EXCEPT FOR CERTAIN DOCUMENTS TO BE SIGNED BY GOVT OF GHANA. THESE INCLUDE A SECOND AMENDMENT TO A GUARANTEE AGREEMENT OF THE GOVT PREVIOUSLY CONCLUDED WITH EXIM IN CONNECTION WITH THE ORIGINAL EXIM CREDIT IN 1962, AS AMENDED, AND IN CONNECTION WITH A SECOND EXIM CREDIT IN 1969. GOG NOW RAISING QUESTIONS ABOUT SIGNING THIS SECOND AMENDMENT. DR. ASANTE DISCUSSED THESE QUESTIONS WITH EXIM IN WASH AND WAS ADVISED THAT HE WOULD BE SUPPLIED WITH A LETTER FROM EXIM CLARIFYING A RATHER MINOR POINT. EXIM WOULD APPRECIATE EMB'S DELIVERING FOLLOWING LETTER TO DR. ASANTE:

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QUOTE DR. S.K.B. ASANTE, DEPUTY ATTORNEY GEN, MINISTRY OF

JUSTICE, REPUBLIC OF GHANA, ACCRA, RE: EXIMBANK CREDIT 5431-GHANA, VOLTA ALUMINIUM COMPANY LTD, DEAR DR. ASANTE: IN CONNECTION WITH OUR RECENT DISCUSSIONS OF THE DRAFT SECOND AMENDMENT TO GUARANTEE AGREEMENT BETWEEN THE REPUBLIC OF GHANA AND EXPORT-IMPORT BANK OF THE UNITED STATES (EXIMBANK), I WISH TO CONFIRM OUR RECENT CONVERSATION IN WASHINGTON. QUOTE THE ASSURANCES GIVEN BY YOUR GOVT IN THE FORM OF THE GUARANTEE AGREEMENT ORIGINALLY ENTERED INTO IN 1962 WITH EXIMBANK REPRESENT A FARSIGHTED APPROACH TO THE FINANCING OF THE SMELTER PORTION OF THE ALUMINIUM-POWER COMPLEX THAT MADE SUCH FINANCING POSSIBLE WITHOUT INVOLVING ANY FINANCIAL COMMITMENT OF YOUR GOVT. THUS, ONLY IF YOUR GOVT MADE A DELIBERATE DECISION TO INTERFERE WITH THE SMELTER OPERATION BY ACTIONS AMOUNTING EITHER TO ASSUMPTION OF CONTROL OF SUCH OPERATIONS OR MATERIAL IMPAIRMENT OF THE MORTGAGE TO EXIMBANK ON THE VALCO ASSETS, WOULD YOUR GOVT ASSUME FINANCIAL LIABILITY UNDER THE GUARANTEE. UNDER THESE CIRCUMSTANCES, YOUR GOVT'S CONCERN FOR DOUBLE LIABILITY FOR THE SAME ACTS WOULD BE GROUNDLESS SINCE UNDER ANY CONCEPT OF GOVT LIABILITY TO VALCO OR ITS SHAREHOLDERS FOR ACTS ALSO CONSTITUTING AN EVENT OF GUARANTEE UNDER THE GUARANTEE AGREEMENT, THE VALUE OF VALCO'S ASSETS TO VALCO OR ITS SHAREHOLDERS WOULD BE REDUCED BY THE LIABILITIES OF VALCO

TO EXIMBANK ASSUMED UNDER THE GUARANTEE AND HAVING A PRIOR SECURED CLAIM ON SUCH ASSETS TO WHICH YOUR GOVT UNDER ITS GUARANTEE IS SUBROGATED. QUOTE IN ADDITION TO THESE BROAD CONCERNS, YOU HAD EXPRESSED CONCERN THAT THE PHRASE 'AMOUNTS OWED OR TO BE OWED UNDER THE EXIMBANK CREDIT AND THE SECOND ADDITIONAL EXIMBANK CREDIT' IN ARTIVCLE I OF ANNEX I OF THE GUARANTEE AGREEMENT CREATED AN UNCERTAINTY AS TO THE AMOUNT COVERED BY THE GUARANTEE. AS I POINTED OUT, THE PHRASE WAS USED IN THE INITIAL GUARANTEE AGREEMENT AND IN EACH SUBSEQUENT AMENDMENT BECAUSE THE GUARANTEE TAKES EFFECT UPON THE OCCURRENCE OF AN EVENT OF GUARANTEE, AND AT THAT TIME, DISBURSEMENTS UNDER THE CREDITS MAY NOT HAVE BEEN COMPLETED. TO THE EXTENT FURTHER DISBURSEMENTS MIGHT BE MADE AFTER SUCH EVENT OF GUARANTEE, AMOUNTS TO BE OWED, WHEN AND IF DISBURSEMENTS ARE MADE UNDER THE CREDITS AS WELL AS AMOUNTS THEN OWED AS A RESULT OF FUNDS ALREADY DISBURSED BUT NOT REPAID, WOULD BE COVERED BY THE GUARANTEE. QUOTE IN NO EVENT, HOWEVER, WOULD THE GOVT BE LIABLE AT ANY GIVEN TIME FOR MORE THAN WAS UNCLASSIFIED

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THEN OUTSTANDING AND UNPAID UNDER THE CREDITS. DISBURSEMENTS HAVE ALREADY BEEN COMPLETED UNDER THE EARLIER CREDITS, BUT, TO THE EXTENT THAT SUCH LIABILITY MIGHT BE INCREASED BY FURTHER DISBURSEMENTS UNDER THE SECOND ADDITIONAL EXIMBANK CREDIT AFTER AN EVENT OF GUARANTEE HAD OCCURRED, THERE EXIST SAFEGUARDS TO CUT OFF SUCH DISBURSEMENTS IF SUCH CUT-OFF WERE DEEMED WARRANTED. QUOTE THUS, IF, UPON THE HAPPENING OF AN EVENT OF GUARANTEE, THE EXPANSION AUGMENTATION HAD NOT BEEN

COMPLETED, IT MIGHT STILL BE DESIRABLE FROM THE STANDPOINT OF ALL CONCERNED FOR IT TO BE COMPLETED AND FOR EXISTING LOAN FACILITIES TO BE UTILIZED TO PERMIT SUCH COMPLETION. ON THE OTHER HAND, IF THE GOVT HAD, BY SUCH EVENT OF GUARANTEE, TAKEN OVER CONTROL OF VALCO, THE GOVT COULD SIMPLY DECLINE TO REQUEST FURTHER DISBURSEMENTS UNDER THE SECOND ADDITIONAL EXIMBANK CREDIT. MOREOVER, UPON THE HAPPENING OF AN EVENT OF GUARANTEE, EXIMBANK WOULD HAVE THE RIGHT AND MOST LIKELY WOULD SUSPEND FURTHER DISBURSEMENTS UNDER SUCH CREDIT.

QUOTE IN THE UNLIKELY EVENT THAT AN EVENT OF GUARANTEE SHOULD OCCUR UNDER CIRCUMSTANCES IN WHICH THE GOVT DID NOT TAKE OVER CONTROL OF VALCO, AND THE GOVT DID NOT THINK COMPLETION OF THE EXPANSION AUGMENTATION WAS JUSTIFIED, AND SO NOTIFIED EXIMBANK, I BELIEVE THAT EXIMBANK WOULD EXERCISE ITS RIGHT TO SUSPEND FURTHER DISBURSEMENTS UNDER SUCH CREDIT.

QUOTE I TRUST THAT THIS EXPLANATION, AS WELL AS THE ANSWERS GIVEN TO YOUR OTHER QUESTIONS, HAVE ALLAYED CONCERNS YOU HAVE EXPRESSED.

QUOTE AS I MENTIONED TO YOU IN OUR DISCUSSIONS, EXIMBANK HAS FROM THE BEGINNING OF ITS PARTICIPATION IN THE VALCO PROJECT IN GHANA PLACED GREAT RELIANCE ON THE ASSURANCES OF THE GOVT THAT, IF THE GOVT SHOULD DECIDE TO TAKE ACTION AMOUNTING TO AN EVENT OF GUARANTEE, THE GOVT WOULD THEREAFTER GUARANTEE VALCO'S INDEBTEDNESS UNDER THE EXIMBANK CREDITS TO VALCO. SUCH ASSURANCES TO EXIMBANK AS AN INDUCEMENT TO ITS PROPOSED NEW LOAN ARE AS SIGNIFICANT TO EXIMBANK AS THEY WERE AS AN INDUCEMENT TO ITS ORIGINAL LOANS.

QUOTE WE, THEREFORE, LOOK FORWARD TO THE EXTENSION BY THE GOVT OF GHANA OF SUCH ASSURANCES THROUGH THE SECOND AMENDMENT TO THE GUARANTEE AGREEMENT WITH RESPECT TO THE PROPOSED NEW LOAN.
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QUOTE SINCERELY, JOSEPH H. GAINER, COUNSEL END QUOTE. END
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